

# **NIH POLICY MANUAL**

## **1172 – Defense of Suits Against NIH Employees Operating Motor Vehicles in Scope of Employment Issuing Office: OD/OM/ORS/SER/DP 301-496-2387 Release Date: 11/24/2009**

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### **1. Explanation of Material Transmitted:**

This chapter establishes policy and describes procedures for handling the law suits against the National Institutes of Health (NIH) community. It is being revised at this time to: a.) incorporate plain language requirements b.) be in compliance with NIH Manual 1710 requirement to update manual issuances every 5 years, and c.) to reflect organizational changes resulting in the layering of the Office of Research Services (ORS).

### **2. Filing Instructions:**

**Remove:** NIH Manual Chapter 1172 dated: 10/31/87

**Insert:** NIH Manual Chapter 1172 dated 11/24/09

**PLEASE NOTE:** For information on:

- Content of this chapter, contact the issuing office listed above.
  - NIH Manual System, Contact the Office of Management Assessment, OM, on 301-496-4606.
  - Online information, enter this URL :  
<http://www1.od.nih.gov/oma/manualchapters/>
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### **A. Purpose:**

This chapter describes the procedures to be followed by an NIH employee if he/she is sued for damage to property, or for personal injury or death due to the

operation of a motor vehicle within the scope of employment. This policy is applicable only to NIH employees and does not apply to contractors.

## **B. Background:**

Public Law 87-258 (28 U.S.C. Sec. 2679) amended the Federal Tort Claims Act to require the Department of Justice to defend such suits and gives that Department responsibility for determining whether the employee involved in such a suit was driving the motor vehicle within the scope of employment when the accident occurred. Also, it provides that a suit against the Government is the exclusive remedy in cases where a Federal employee operating a motor vehicle within the scope of his/her employment is involved in an accident.

## **C. References:**

1. Federal Tort Claims Act, 28 U.S.C. § § 2671 et seq.:  
<http://law.justia.com/us/codes/title28/28usc2671.html>
2. 45 C.F.R. Part 35, Tort Claims Against the Government:  
<http://law.justia.com/us/cfr/title45/45-1.0.1.1.22.html>
3. NIH Manual Chapter 1743, "Keeping and Destroying Records, "Appendix 1, NIH Records Control Schedule:  
<http://www1.od.nih.gov/oma/manualchapters/management/1743/>

## **D. Responsibility and Procedures:**

Any NIH employee (or personal representative, if the action is brought against the estate) must inform his/her immediate supervisor as soon as possible after receiving information or papers that the employee is or will be sued for damages or that a claim has been filed based on the employee's operation of a motor vehicle in the scope of his/her Federal employment.

As soon as the employee receives papers concerning the suit, he/she must deliver the papers or a complete copy thereof to his/her supervisor. The supervisor must immediately send via fax and mail, all documents relating to the

motor vehicle incident, including a completed [Standard Form 91](#) (Motor Vehicle Accident Report), to:

U.S. Department of Health and Human Services  
Office of the Secretary, Office of the General Counsel  
General Law Division, Claims and Employment Law Branch  
Claims Office  
Room 4256, Cohen Federal Building  
330 Independence Ave., S.W.  
Washington, D.C. 20201  
Fax: (202) 205-6082

This office makes the final determination regarding the disposition of administrative tort claims and coordinates with the Department of Justice for the defense of suits against the Government.

#### **E. Additional Information:**

Additional information can be obtained by contacting the HHS Office of the General Counsel, General Law Division, Claims and Employment Law Branch at (202) 619-0150, (202) 619-2155, or (202) 619-3272.

#### **F. Records Retention and Disposal:**

All records (e-mail and non-e-mail) pertaining to this chapter must be retained and disposed of under the authority of [NIH Manual 1743](#), "Keeping and Destroying Records." Specifically, refer to 1300 Station Management C. Protection and Security in Appendix 1 of 1743, "Keeping and Destroying Records." This section applies to records related to directives, policies, procedures and measures taken for protection of NIH-owned facilities or privately operated facilities given protection by NIH.

In the event that an administrative tort claim or law suit is filed, a litigation hold should be placed on all records pertaining to this chapter. Litigation holds require

the preservation of relevant documents while litigation is pending, and may supersede any statutes, regulations or policies regarding document retention and destruction. Should questions arise concerning litigation holds, please contact the HHS, Office of the General Counsel, General Law Division, Claims and Employment Law Branch at the numbers listed in Section E.

*NIH e-mail messages:* NIH e-mail messages (messages, including attachments, that are created on the NIH computer systems or transmitted over NIH networks) that are evidence of the activities of the agency or have informational value are considered Federal records. These records must be maintained in accordance with current NIH Records Management guidelines. Contact your IC Records Officer for additional information.

All e-mail messages are considered Government property, and if requested for a legitimate Government purpose, must be provided to the requester. Employees' supervisors, NIH staff conducting official reviews or investigations, and the Office of Inspector General may request access to/or copies of the e-mail messages.

E-mail messages must also be provided to the Congressional oversight committees, if requested, and are subject to the Freedom of Information Act requests. Since most e-mail systems have back-up files that are retained for significant periods of time, e-mail messages and attachments are likely to be retrievable from a back-up file after they have been deleted from an individual's computer. The back-up files are subject to the same requests as the original messages.

## **G. Internal Controls:**

The purpose of this chapter is to provide guidance to NIH personnel.

- 1. Office Responsible for Reviewing Internal Controls Relative to this Chapter:** Through this manual issuance, the Division of Police, ORS is

responsible for ensuring that internal controls are implemented and working.

2. **Frequency of Review:** Ongoing
3. **Method of Review:** The Division of Police will maintain oversight and ensure compliance with this policy by assessing documentation obtained through routine operations and interaction with the population on the NIH campus.
4. **Review Reports:** Reports are sent to the Chief of Police. Issues of special concern will be brought immediately to the attention of the Associate Director for Research Services (ADRS) and the Deputy Director for Management (DDM).